

EXHIBIT 2

EFiled: Sep 28 2011 4:45PM EDT
Transaction ID 40078891
Case No. 5821-VCL



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THOMAS TURBERG, On Behalf of	:	
himself and All Others	:	
Similarly Situated,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action
	:	No. 5821-VCL
ARCSIGHT, INC., THOMAS J.	:	
REILLY, SANDRA BERGERON,	:	
WILLIAM P. CROWELL, E. STANTON	:	
McKEE, JR., CRAIG RAMSEY,	:	
SCOTT A. RYLES, TED SCHLEIN,	:	
ROGER SIBONI, ERNEST VON	:	
SIMSON, HEWLETT-PACKARD	:	
COMPANY, and PRIAM	:	
ACQUISITION CORPORATION,	:	
	:	
Defendants.	:	

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Chancery Courtroom No. 12C
New Castle County Courthouse
Wilmington, Delaware
Tuesday, September 20, 2011
9:58 a.m.

BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor.

- - -

SETTLEMENT HEARING

- - -

CHANCERY COURT REPORTERS
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1 APPEARANCES:

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3 -and-

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Ryles, Ted Schlein, Roger Siboni and Ernest Von
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13 For Defendants Hewlett-Packard Co. and
14 Priam Acquisition Corp.

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1 MR. MONTEVERDE: Good morning, Your
2 Honor.

3 THE COURT: Good morning,
4 Mr. Monteverde.

5 Mr. deLeeuw, how are you? Are you
6 introducing?

7 MR. deLEEUEW: Yes, Your Honor.

8 THE COURT: Welcome.

9 MR. deLEEUEW: I rise solely to
10 introduce my co-counsel, Juan Monteverde of
11 Faruqi & Faruqi.

12 We also have with us today observing
13 the proceedings, Miss Alexandra Marchuk. She's not
14 yet been admitted.

15 THE COURT: Working on those clerkship
16 requirements?

17 MR. MONTEVERDE: She is joining our
18 firm.

19 THE COURT: You are elsewhere?

20 MISS MARCHUK: In New York.

21 THE COURT: We won't hold that against
22 you too much. We like New Yorkers.

23 MR. MONTEVERDE: Thank you, Your
24 Honor.

1 THE COURT: Mr. Monteverde, how have
2 you been?

3 MR. MONTEVERDE: I've been okay.
4 That's my client, Your Honor.

5 THE COURT: So who is Mr. Turberg?

6 MR. MONTEVERDE: He's an individual --
7 he actually has been represented by my firm before and
8 he's an individual that actually had 2500 shares in
9 ArcSight worth approximately 100 grand. And he was
10 one that did not like the transaction as it was
11 structured and the price itself. And certainly
12 because he has a relationship with my firm, he
13 contacted us and told us that he had these shares and
14 asked us if we could assist him, and we certainly were
15 happy to do so.

16 Your Honor, just for putting things
17 into context, when this transaction was announced
18 September 13th, 2010 -- and quite frankly, what caught
19 my eye -- my attention -- was the top-up that was
20 structured in this transaction. At the same time,
21 Your Honor, I was co-lead counsel in the Cogent matter
22 that later I took to preliminary injunction before
23 Vice Chancellor Parsons. The reality is, the world
24 did change after October 5th when that ruling came

1 down. As this transaction was announced, 34.5 million
2 shares outstanding, with 150 million authorized and a
3 top-up option, and you had a lock-up agreement of
4 19 percent to insiders and 15 percent of other related
5 parties. Quite frankly, Your Honor, I did not like
6 it. I do understand that maybe my views are not the
7 same as this Court, but I certainly think, before the
8 decision in Cogent, and as well Your Honor's
9 involvement in NCXT in late September, I think we had
10 more than a good-faith basis to really attack this
11 transaction.

12 THE COURT: That's helpful. I've got
13 to tell you, one of my questions was going to be what
14 inspired you. It did seem like an arm's-length deal
15 that had a significant premium.

16 MR. MONTEVERDE: That was the
17 motivation. Your Honor, quite frankly, has seen me
18 appear before this Court before. Maybe I'm too
19 inspired at the time. I certainly like inspiration.
20 I don't do cases for the sake of doing them. And I
21 like this case.

22 (At this time R. Judson Scaggs entered
23 the courtroom.)

24 THE COURT: Good morning, Mr. Scaggs.

1 MR. SCAGGS: I'm sorry, Your Honor.
2 Am I late?

3 THE COURT: No. I think I actually
4 looked at the clock as we were walking in and I
5 realized we were starting two or three minutes early.

6 MR. SCAGGS: I'm so sorry, Your Honor.

7 THE COURT: It's my fault. As I say,
8 as I walked in, I noticed that the clock was about two
9 or three minutes before. So don't feel badly. It's
10 good to see you. It's not daylight savings time.

11 MR. SCAGGS: Your Honor, I'm prepared.
12 I like to be two minutes early. I'll sit down and not
13 hold things up.

14 THE COURT: No problem at all. As I
15 said, you were probably here precisely on time and I
16 made the mistake of walking in a couple minutes early.

17 MR. MONTEVERDE: Like I was saying,
18 the top-up is what inspired us to join in. And I'm
19 very proud of this settlement, for two things, Your
20 Honor: one, because there was also litigation that
21 ensued in California brought by my colleagues
22 Robbins Geller on the West Coast. And we were able --
23 and, quite frankly, I think the tender offer and the
24 timing might have helped us be able to reach agreement

1 and coordinate the litigation from inception. But
2 that was one thing I'm proud of. I'm proud because
3 multi-jurisdiction was cured here. We were able to
4 litigate together, without the Court's intervention,
5 without wanting to have defendants move for stay
6 against the other or have one more motion that had to
7 be filed. But I'm also proud about the actual result.
8 The reason why, Your Honor, after the discovery with
9 defense counsel, we uncovered that actually there were
10 multiples that had not been disclosed. I'm not
11 talking about they just had a reference range and now
12 we want every single multiple, which we did get for
13 2011. We discovered actually 2010 multiples -- this
14 is happening in the middle of 2010 -- relevant to
15 shareholders were considered by the board. Nowhere in
16 the 14D-9 that was even mentioned. So I'm proud that
17 we fought and that we actually were able to persuade
18 defendant to disclose that.

19 What I found this morning -- if I
20 may --

21 THE COURT: Can you focus me on that,
22 because what I was focused on in terms of the multiple
23 disclosure was the essentially detailed information
24 you got on the comparables. What is this that you're

1 speaking of?

2 MR. MONTEVERDE: Well, it's both, Your
3 Honor. If I may approach, I actually made it separate
4 photocopies. It may be easier for Your Honor.

5 THE COURT: Sure.

6 MR. MONTEVERDE: Thank you, Your
7 Honor.

8 THE COURT: Did Mr. Scaggs get one?

9 MR. MONTEVERDE: I'm doing that as we
10 speak.

11 THE COURT: This is just the same as
12 what I got. What did you do special to it?

13 MR. MONTEVERDE: I actually made the
14 photocopies of the portions. You do have it, Your
15 Honor. I just wanted you to have it handy.

16 THE COURT: I thought you had done
17 something nice, like highlighting it and putting in
18 fancy colors.

19 MR. MONTEVERDE: No. I figured my
20 voice would be the highlight.

21 THE COURT: Everything always sounds
22 better when said with an accent. Everything always
23 sounds better and more persuasive when said with an
24 accent.

1 MR. MONTEVERDE: That may be why my
2 firm keeps sending me to these hearings. I don't
3 know. But I'm happy to be before Your Honor. Let me,
4 if I may, Your Honor, if you turn to page two of the
5 amendment, which has the 14D-9 amendment, No. 2, and
6 page 28, which would be the fourth page of the
7 excerpt.

8 THE COURT: Okay.

9 MR. MONTEVERDE: Actually, my
10 apologies. Page 27. Your Honor will see, after the
11 list of the companies that starts with Blue Coat
12 Systems, it says there that, for purposes of this
13 analysis, Morgan Stanley analyzed the following
14 multiples and below it bullets two numbers. It says
15 the 2011 earnings per share and the revenue. And
16 then, if Your Honor turns the page, Your Honor only
17 sees a reference range for those numbers and implied
18 values.

19 Well, after discovery we uncovered
20 that they also reviewed 2010 numbers. Your Honor, if
21 I may direct Your Honor's attention to the other
22 document, the 14D-9 amendment, on page two, Your Honor
23 will see a big chart. It not only not shows every
24 multiple -- so, yes, Your Honor is correct -- there's

1 additional detail. Your Honor will also see there is
2 the 2010 revenue multiples as well as the EBITDA
3 multiples for both 2011 and 2010 and the earnings per
4 share for 2010.

5 What the original 14D-9 had -- what
6 shareholders were told was Morgan Stanley only reviews
7 2011 multiples. Not fully correct, Your Honor.
8 Morgan Stanley also reviewed 2010 multiples and also
9 provided them to the board of directors in their
10 presentation of September 12th.

11 THE COURT: I must not be
12 understanding. I see the chart. It starts with
13 Blue Coat Systems on the top and goes across 2010.

14 MR. MONTEVERDE: Correct.

15 THE COURT: Is your point just that it
16 includes both the 2010 information and the 2011
17 information?

18 MR. MONTEVERDE: Yes. But the
19 original 14D-9 only had 2011 information. No word in
20 the supplement -- in the original 14D-9. There was no
21 indication the 2010 was observed and presented to the
22 board.

23 THE COURT: Somebody is beeping. Who
24 is beeping?

1 THE COURT REPORTER: That was me, Your
2 Honor. It was my laptop.

3 THE COURT: Oh, that was you, Diane.
4 It's an hourly rate beep. Whatever your hourly rate,
5 Mr. Monteverde, that gives you an incentive to
6 mitigate and to somewhat moderate your hourly rate
7 contentions.

8 MR. MONTEVERDE: That's why I don't
9 bring my BlackBerry or cell phone inside, Your Honor.
10 I hopefully get the entire amount and I don't have to
11 worry about the beeping penalties.

12 THE COURT: It's less than the
13 Chancellor. The last time the Chancellor had this
14 happen, he was considering pro hac revocations. One
15 or the other, either way.

16 Did they ever give the 2010
17 information for ArcSight? I see page 28 has the 2011
18 information for ArcSight. Is there some similar --

19 MR. MONTEVERDE: Your Honor is
20 correct. The analysis here focused on what are the
21 numbers of the companies that they looked at. The
22 2010 numbers one could get and there actually was
23 analysts following. They were street reports. So
24 certainly we're starting with the premise, obviously,

1 that this is material information. A shareholder who
2 actually wants to look at things and use the
3 information will know how to utilize this information.
4 One could actually go on Yahoo Finance or Bloomberg,
5 whichever, and pull estimates for ArcSight and they
6 would be available and they could then use these
7 multiples. I think what's important, Your Honor, and
8 what I want to focus this Court's attention this
9 morning, is the original 14D-9 was silent.

10 THE COURT: Was what?

11 MR. MONTEVERDE: Silent. Did not
12 discuss that they also observed EBITDA multiples and
13 did not discuss that they looked at 2010 numbers. I
14 felt not only this was a victory, I felt, quite
15 frankly, if defendants would not agree to give us this
16 information, I would be comfortable coming before Your
17 Honor on a preliminary injunction and saying, "Your
18 Honor, we start with Pure Resources, that a fair
19 summary must be disclosed to shareholders of material
20 information presented to the board."

21 THE COURT: Look, maybe you ought to
22 do that some time because, you know, it's odd that
23 these banker books go to the board. And I've seen a
24 lot of banker books. The banker book that goes to the

1 board never just has a list of names and then
2 reference ranges.

3 MR. MONTEVERDE: Correct.

4 THE COURT: The banker book that goes
5 to the board invariably has a chart like this. And
6 can you imagine what the directors would say if they
7 got a book that just had a list of names and then a
8 bottom line reference range? I mean, they'd say,
9 "What are you doing, Morgan Stanley? Where is your
10 backup?" Right?

11 MR. MONTEVERDE: Exactly.

12 THE COURT: Can you imagine the due
13 care claim that there would be if that was all the
14 board book contained?

15 MR. MONTEVERDE: But if I may, Your
16 Honor --

17 THE COURT: You would be excited about
18 that.

19 MR. MONTEVERDE: I would be very
20 excited. In this case I also was excited because, in
21 the first 14D-9, the one issued on September 22nd, it
22 says Morgan Stanley analyzed the following statistics:
23 Earnings per share for 2011 and revenue for 2011.

24 On the improved 14D-9, now it says

1 Morgan Stanley analyzed the following statistics: 2010
2 and 2011 revenue, EBITDA 2010 and 2011, and earnings
3 per share 2010, 2011, and then they give a summary of
4 those numbers.

5 Your Honor, the original 14D-9 did not
6 say anything about EBITDA or 2010. Those were key
7 inputs given to the board. I agree with Your Honor
8 that the victory is not that we disclosed necessarily
9 the multiples. The bigger victory is that we
10 uncovered that they also looked at 2010 numbers, they
11 also looked at EBITDA numbers. Shareholders were not
12 told that. This is a different document. I mean --

13 THE COURT: I think I view this a
14 little bit differently than you in that respect. I
15 don't think that there's -- I guess you could say that
16 that's some type of omission. But really what we're
17 doing is we're debating what fair summary means. And
18 at least initially the banker's view of the world was
19 fair summary meant we just give you our bottom line
20 conclusion. Then, when it turned out that they were
21 wrong about that -- and Chancellor Strine gets really
22 credit for all this -- what they started saying was
23 fair summary meant you only get the bottom line
24 conclusion of each of our individual analyses.

1 So then it turned out, as
2 Then-Vice Chancellor Strine explained it, "No,
3 actually, they were wrong about that. Fair summary
4 actually means summary, not just your conclusions."

5 So then we started getting these lists
6 of names, without any other information, so that
7 stockholders could, I guess, go on an informational
8 scavenger hunt and try to develop for themselves all
9 of the multiples. So really what I hear you saying is
10 the value that you provided was that you got actually
11 a fair summary.

12 MR. MONTEVERDE: That was not before.
13 And it was omissions, Your Honor. I mean, I think
14 it's very important -- Your Honor, we can certainly
15 disagree, but I will -- as I stand before Your Honor,
16 not only am I proud of the settlement, I would have
17 liked to have brought this triple injunction. I would
18 have definitely liked it. I think I would have had
19 fun. And I think Your Honor would have sided with me
20 at a preliminary injunction. I don't know.

21 THE COURT: Here's my question for
22 you. Maybe it's --

23 MR. MONTEVERDE: I could probably
24 answer it, Your Honor.

1 THE COURT: That's okay. A lot of
2 times backup in the board book is in the form of a --
3 I'm going to get landscape and portrait backwards --
4 but it's a horizontal page; right? It's not a
5 vertical page like this. It's a horizontal page. Is
6 this landscape? There you go.

7 MR. MONTEVERDE: They were graphs.

8 THE COURT: See, because what is
9 troubling to me and to other members of the Court is
10 to get into the details of drafting these banking
11 summaries and sort of deciding how much of the chart
12 you put in. So I was assuming that this corresponded
13 to a landscape table in the board book of the kind
14 that I would often see, and that this was basically
15 all the columns on there. Is that right? Or did you
16 pick and choose some of the columns and not others?

17 MR. MONTEVERDE: I mean, it is right
18 in the sense that the information is the same. But
19 instead of doing -- I'm happy to lend this to Your
20 Honor with --

21 THE COURT: Why don't you hand it up.
22 Is that the presentation?

23 MR. MONTEVERDE: It's my only copy.

24 THE COURT: Let me take a quick gander

1 and maybe I'll give it back to you.

2 MR. MONTEVERDE: And if I may just,
3 for illustration, Your Honor, I think what they do --
4 so from every graph they put the multiples for every
5 company and then they develop that into a table. It's
6 all the numbers in that page.

7 THE COURT: The only difference
8 between this and what I was envisioning in my head was
9 often you get a sheet of paper that looks like this
10 page of transaction matrix --

11 MR. MONTEVERDE: Correct.

12 THE COURT: -- where they're looking
13 at the data in a chart form rather than in a table
14 form.

15 MR. MONTEVERDE: Yes.

16 THE COURT: Graphics are great. This
17 just does the same thing as graphics. The old school
18 way used to be to put them in terms of numbers.

19 Look, I understand where you're coming
20 from on that. So you got that.

21 Here, Donna, why don't you give that
22 back to Mr. Monteverde.

23 MR. MONTEVERDE: Not to stress it
24 again, Your Honor. For me, the victory? 2010 not

1 even mentioned. EBITDA not even mentioned. We got
2 it.

3 THE COURT: Again, what it gets back
4 to, it's not -- it's a problem because therefore it
5 wasn't a fair summary. They were only telling
6 stockholders 2011 when they actually also considered
7 2010.

8 MR. MONTEVERDE: Correct. We got it
9 in the first summary. And that's the comparable
10 company analysis is where we start, but it was across
11 the board. We saw sort of that theme -- the theme,
12 I'll call it.

13 The next disclosure we got is that the
14 research analyst report again just said originally --
15 if we turn to the next page, Your Honor. If Your
16 Honor wants to see this in page 28, there's the second
17 analysis that follows. It's titled, "Equity Research
18 Analysts' Price Targets."

19 THE COURT: I get this.

20 MR. MONTEVERDE: The last sentence
21 said \$32. Guess what, Your Honor? They also had a
22 \$40 price target. What they say is we're not going to
23 disclose that because that might have been affected
24 because there was a leak to the market. I'm sorry,

1 but I think shareholders need to know that. We got
2 that, Your Honor.

3 The same thing on the next one for the
4 precedent transactions analysis, Your Honor. What
5 originally was disclosed were just reference ranges.
6 And here now what we said is, we would like the entire
7 data to be provided, and we got it. And that's on
8 page six of the amendment.

9 THE COURT: Here's my question for
10 you. One of the things that troubles me about these
11 types of things is that you create this situation
12 where the bankers have an incentive to not put in this
13 stuff. The issuer has an incentive not to really push
14 hard back on the bankers, and then you all come along
15 and you can add this stuff in and get a settlement
16 that supports a fee. How do I solve that problem
17 where people actually put this stuff in the first
18 time? And maybe it puts a little bit more pressure on
19 you to find some transactions where there's real stuff
20 going on. But how do I break this circle of
21 supplementation?

22 MR. MONTEVERDE: I think the way you
23 break that, Your Honor, I don't think it's to chastise
24 or punish the firms who actually are focusing on what

1 I think are the more important enhancements and that
2 actually uncover data that was not summarized. I
3 think that will happen. That's going to continue to
4 happen because not every banker -- quite frankly, Your
5 Honor, we focus in this case -- I have my theory why
6 they didn't -- why ArcSight did not put in 2010
7 numbers because there were higher multiples. That's
8 my theory. I could be wrong. If you calculate that,
9 I think a shareholder would have seen that and said,
10 "Gee, the multiples for earning per share for 2010 is
11 43 and the earnings per share, I think, is \$.77. That
12 means 35 bucks." But if you look at the actual 2010,
13 it's 53. That that's more like 40 or 45. The offer
14 is 43.50. Maybe it doesn't look as good. I don't
15 know. We don't know that. This is my own
16 Monteverde's theory. It could be right or wrong. I
17 don't think you punish firms that are actually working
18 hard, are willing to take things to preliminary
19 injunction.

20 And as to the other settlements that
21 Your Honor may be confronted where it's just an
22 enhancement, maybe Your Honor should do what Your
23 Honor has done in other cases and say, "Wait a second.
24 This may be just a settlement that was just done, so

1 it could support a waiver or a release of a Revlon
2 claim."

3 THE COURT: Here's the thing.

4 MR. MONTEVERDE: But I don't think
5 that's before Your Honor today.

6 THE COURT: You didn't do very much.
7 You really didn't. You filed three days after it came
8 out. You got sort of standard-ish documents, 2,300
9 pages. You didn't take any pre-MOU depositions and
10 you got supplementations. But for this bankers stuff,
11 I don't need to say whether it's material or not.
12 It's certainly better disclosure.

13 The other stuff you got, some of these
14 things I wasn't too impressed with. I almost feel
15 like I've got a difficult choice where one alternative
16 is to criticize you and beat you up for settlements.
17 You don't enjoy that. I don't really enjoy that. The
18 other alternative, I guess, would be really to be
19 generous with you and to start saying, "Look, you get
20 this type of information on bankers? We're talking
21 millions." And then if the issuer and the acquiror
22 start thinking, "So, my goodness, we're going to have
23 to pay millions for this," maybe they'll get their
24 bankers to put it in in the first instance.

1 MR. MONTEVERDE: Me, personally, I
2 like the lottery, Your Honor.

3 THE COURT: You would probably get
4 that once because, after that, the bankers would start
5 putting it in.

6 MR. MONTEVERDE: I know there's a lot
7 of disclosure settlements going on. I know that, Your
8 Honor. But the reality is, I really think this was a
9 good one. I know Your Honor thinks, "Look, you guys
10 didn't work that hard." We worked very hard for a
11 month. I managed to get multi-jurisdiction under
12 control. I think that's a plus. And I uncovered this
13 was not given, Your Honor.

14 THE COURT: Tell me about your hours.
15 How did you get to your hours? Whack it up for me.

16 MR. MONTEVERDE: Whack it up to you.
17 I think we have around 250 grand, roughly, for my firm
18 and I think about 200 grand is pre-MOU, and probably
19 half of that is my time, which equates to maybe
20 170-some hours. I pretty much worked on this case,
21 Your Honor -- I remember settling this case because
22 our office was closed, it was Columbus Day, and I was
23 working through the weekend and I was there on Monday.

24 THE COURT: Look, I've done these

1 cases. You know, 2300 documents, to review that?

2 MR. MONTEVERDE: Right.

3 THE COURT: Even if I give you a
4 minute a page, you're not much more than 40 hours.

5 MR. MONTEVERDE: No, Your Honor. What
6 happened is, you have a tender offer. If this breaks,
7 if we don't have a settlement after that weekend, we
8 would be before Your Honor with an opening brief which
9 was ready, Your Honor. I cannot wait for defendants
10 to tell me, "We've been talking for three days. You
11 know what? See what you do." Your Honor, I don't.

12 THE COURT: You're telling me that you
13 were doing all those other things?

14 MR. MONTEVERDE: Maybe people say,
15 "You know what? That's inefficient." I do this, Your
16 Honor. I know how the game works. So I need to have
17 everything ready, every motion that I can think of,
18 subpoenas, commissions. I don't know how people are
19 going to react. I don't know if they're going to
20 solicit the banker. I don't know. I have to already
21 know who I'm going to contact at outside counsel for
22 the banker. That takes investigation.

23 Your Honor, this case, I don't think
24 the fees -- and I know Your Honor has hesitation and I

1 guess we're jumping ahead of it, but I don't think the
2 500,000 fee request here is generous, because, one,
3 it's multi-jurisdiction litigation. And Your Honor
4 says the reality of them means this is not something
5 that we keep for ourselves entirely. This needs to be
6 sure with other law firms. That's a reality. They
7 also worked on the case.

8 Two, I go back to maybe I'm prouder
9 than I should be. I think uncovering the 2010 numbers
10 and that the banker put it under fairness opinion, or
11 an analysis in support of their fairness opinion and
12 the board of directors got to consider that, the
13 multiples in 2010 were higher than 2011 and we got
14 that disclosed, I think that's a home run. I think
15 the disclosure alone warrants the approval of the
16 settlement and the fee requested.

17 But we did not stop there. We got
18 enhancement disclosures for every analysis, which
19 included in the present transaction every multiple.
20 That's financial information. We then got
21 background -- not voluminous disclosures, Your Honor,
22 but two very important. One, what kind of buyers were
23 you looking at? They were all strategic. Are there
24 any standstills enforceable or in play right now? No,

1 they were not. Someone could come in and make a bid
2 on how to review the company. I think that's also a
3 very important disclosure and has a lot of meaning, at
4 least for those who understand how the process works.

5 Three, we got information about the
6 top-up -- how the top-up worked. First, I did not
7 like the top-up. I said that before. At a minimum, I
8 got them. At least let the shareholders know how many
9 shares you have, how many reserve, how this would be
10 triggered.

11 Now, a shareholder that really wants
12 to find out? Yes, they can go through 10-K, the 10-Q
13 and figure it out probably. Why make the shareholder
14 have to do that homework when you are giving a top-up.
15 You should fully disclose it.

16 Quite frankly, Your Honor, I'm also
17 proud about that section because, after this 14D-9,
18 every -- I don't want to say "every" -- most of them
19 have been disclosing the mechanics and the numbers.
20 I'm not responsible for sending -- I don't know. But
21 I'm proud of it.

22 THE COURT: You're a trendsetter.
23 We're bleeding into the fee issue here. I think
24 there's value to that type of disclosure enhancement.

1 That's the thing that firms, like Mr. Scaggs, get
2 called on to do all the time. You read proxy
3 disclosures. We give people comments. You know what?
4 That takes like two hours. And you give them a
5 markup. You have a telephone call and that's a
6 one-day gig. Maybe there's some ongoing thing, but
7 it's not a 500,000 bill.

8 MR. MONTEVERDE: Well, Your Honor, he
9 gets paid every time. I don't. I think that has to
10 be put into play there a little bit.

11 Also, I don't think we focus on the
12 hourly. We focus on the value. I think Your Honor
13 said it before. I think Your Honor said it first in
14 Novell Pharmaceuticals, and I think it might have been
15 one of Your Honor's first final hearings where the fee
16 was contested and Your Honor there said, "Look, we
17 still have 400, 500,000." Decent disclosures. Dial
18 up or dial down. I think they're good disclosures
19 that put us there. And I think I got -- quite
20 frankly, if I was doing this on a contested fee --
21 Your Honor may laugh here -- I would ask for more than
22 500,000. I advised Your Honor, Your Honor will laugh.
23 But I would.

24 (Laughter.)

1 THE COURT: You're a good man,
2 Mr. Monteverde.

3 Go to page 33 of your brief. This is
4 where you're talking about the efforts of counsel.
5 You say you did a pre-suit investigation of the facts
6 and analyses of the proposed tender offer merger.
7 Tell me about your pre-suit investigation.

8 MR. MONTEVERDE: The pre-suit
9 investigation essentially involves looking at the last
10 10-K, 10-Q for ArcSight, looking at what HP has bought
11 before. It turned out that HP, after this
12 transaction, has started to buy other companies. They
13 needed to start up companies to compete. One of the
14 reasons why it turned out that this case ended up with
15 the going price, they actually ended up paying 52
16 times EBITDA, which has actually been one of the
17 highest payouts. That's one of the reasons why we
18 think our price case wasn't much of a price case. But
19 we don't know that.

20 THE COURT: You know something about
21 it. I appreciate you saying that you got into this on
22 the top-up. I looked at this and I saw a big premium,
23 third-party arm's-length deal. And it did seem a
24 little bit strange that you saw a massive fiduciary

1 wrong. But I understand that you got into it for the
2 top-up.

3 Now, the next thing is consultation
4 with your evaluation.

5 MR. MONTEVERDE: That's the next
6 thing. What we do is, we actually have three or
7 four --

8 THE COURT: Who is the guy?

9 MR. MONTEVERDE: Matthew Morris from
10 RGL. Actually, if I recall correctly, Your Honor, we
11 had two experts here. Because what happened is, when
12 we started the case, I was not working with my
13 colleagues at Robbins Geller. I think they retained
14 Matthew Morris. I believe I retained Cynthia Jones
15 from FMA. And what happens is, as part of her
16 consultation, what we do typically -- I do -- I
17 contact three or four experts that I like. I talk to
18 them briefly. Then they run the conflicts. They come
19 back, yeah, nay, and then we sort of discuss the next
20 steps.

21 I don't normally -- this is me -- I
22 don't like using the same one over and over. One,
23 because I think you get into the issue of bad habits
24 or the same things over and over. I like, also, to be

1 challenged. I like to sometimes try someone new, try
2 different things.

3 THE COURT: It's not going to look
4 good if you got the quasi in-house trained expert.

5 MR. MONTEVERDE: That also may be one
6 of the reasons, Your Honor. So we have several
7 experts that we looked at. That takes time.

8 THE COURT: How much did Mr. Morris
9 make on this?

10 MR. MONTEVERDE: Roughly, I want to
11 say 14 grand, 13 grand.

12 THE COURT: Now, down at the bottom of
13 the page, what complex financial information did you
14 master?

15 MR. MONTEVERDE: Well, Your Honor,
16 actually been able to understand how multiples work
17 and how --

18 THE COURT: You knew that before;
19 right?

20 MR. MONTEVERDE: I knew that before.

21 THE COURT: You didn't have to educate
22 up to this case.

23 MR. MONTEVERDE: You don't have to be
24 educated for the case, but certainly you have to

1 revisit certain things. I certainly do know how
2 multiples work, generally. To be frank, Your Honor,
3 I'm not a banker. I don't do it every day.

4 THE COURT: Can we agree that's
5 probably a little bit of a nervous statement for this
6 case?

7 MR. MONTEVERDE: I think there are
8 persuasive papers. You try to put everything in the
9 best light and accurate.

10 THE COURT: You try to be accurate;
11 right? Did the prosecution of this action require an
12 extensive effort by plaintiffs' counsel to master
13 complex financial information? This is what you do;
14 right?

15 MR. MONTEVERDE: This is what I do.
16 The one thing I can defend a statement is saying,
17 "Well, it requires that I half master it" --

18 THE COURT: That's not what you said.

19 MR. MONTEVERDE: Your Honor, I
20 certainly take note of that, and I don't think Your
21 Honor is going to see that sentence again.

22 THE COURT: I got to tell you, part of
23 what I think you guys ought to think about -- you
24 guys -- I don't mean that in gender-specific sense --

1 but when people come in and they oversell things, it's
2 something that I notice. I think that this is a
3 settlement where you got some stuff, you got some
4 disclosure enhancement. You are very fortunate that
5 the defendants didn't oppose. This isn't a home run
6 case and you didn't have to master complex financial
7 information. If that was the case, you would have
8 asked for a lot more; right?

9 MR. MONTEVERDE: I will tell Your
10 Honor, sometimes you use words that may read well. I
11 hear Your Honor's comment. I can see --

12 THE COURT: I do read these briefs.
13 You realize that. I do read them.

14 MR. MONTEVERDE: And I do appreciate
15 that. I want Your Honor to read it because you're
16 telling me what you're telling me. I'm taking notice,
17 and I will certainly take that into consideration and
18 actually react to it going forward. I don't think we
19 punish someone for a couple misused words, if you want
20 to even say that, when I think -- again, Your Honor
21 does not agree this is a home run, or not with me. I
22 actually think it's quite a bit of a home run. But I
23 don't do baseball. I don't know much. I think they
24 go around somewhere.

1 THE COURT: What is your sport,
2 Mr. Monteverde?

3 MR. MONTEVERDE: You know, Your Honor,
4 everyone actually makes fun of me because I'm from
5 Spain but I don't really follow soccer. My parents
6 were intellectuals, so Plato and the Republic was more
7 my focus than sports.

8 THE COURT: I'll tell you what, then.
9 I want your briefs to be accurate, like Platonic
10 forms. I do not want them to be the shadows of the
11 cave. It struck me when I was reading the prosecution
12 of this action required an extensive effort by
13 plaintiffs' counsel to master complex financial
14 information, that strikes me as the shadow on the wall
15 of the cave made by the shadow puppets that are being
16 carried around. And, you know, look, as I say, you
17 come in here a lot. I don't want to beat you up on it
18 and I appreciate you're going to take note of it.

19 MR. MONTEVERDE: Yes. And so what
20 we're left with is just essentially a summary. There
21 were three focus of disclosure. It was the
22 financials, it was the background and the enforcement
23 of the standstill agreement and the top-up disclosure
24 of how the mechanics worked. We were happy about it.

1 We then took depositions post-close, confirmatory
2 discovery. We were satisfied the settlement was fair,
3 reasonable and adequate.

4 THE COURT: I was glad to see that
5 Morgan Stanley seemed to have put forward a real
6 banker for you.

7 MR. MONTEVERDE: Yeah, Mr. Marth.
8 And, Your Honor, we took a lot of time. I actually
9 remember with a stipulation of settlement there were
10 some issues, but we were able to finally submit it to
11 this Court on June 1st. Your Honor entered a
12 scheduling order on June 15th, as of which was the
13 result of 7,776 notices were sent. Not one objection.
14 So I do think that also merits some consideration. I
15 think the settlement should be approved.

16 THE COURT: I think it suggests that
17 people are rationally apathetic, that they know the
18 fee is coming out of somebody else's pocket and that
19 there's a really great deal here, and that it actually
20 would -- to write the objection letter means that you
21 don't get to spend that hour with your kids. You
22 know, this is a friction lost. I know we have cases
23 that say the absence of objections is warranted. In a
24 context where you actually empower class counsel to

1 act because of the premise the stockholders are
2 rationally apathetic, the absence of objections is
3 consistent with the whole premise of class counsel.
4 It's not inherently supportive of the settlement.

5 Now, maybe if you had some radically
6 out-of-range settlement, people might get fired up
7 enough to write in. So I don't give much weight to
8 that.

9 MR. MONTEVERDE: I still think it's a
10 very good settlement. Fair enough, Your Honor. I
11 think certification is warranted here. From
12 announcement September 13th through October 22nd --

13 THE COURT: I don't have any questions
14 about that.

15 MR. MONTEVERDE: The fee. I know Your
16 Honor has hesitation about it. I do think 500,000 is
17 within the range of reasonableness. I will be the
18 first to admit it is maybe at the end, but it is
19 within that range of fairness and what's reasonable.
20 I think the lawyers involved here are lawyers that we
21 do this. I thought we did a good job. And I think,
22 quite frankly, the multi-jurisdictional avoidance of
23 litigation by having firms with different clients in
24 different jurisdictions work together which, at the

1 end of the day, means we have to share in, I think
2 that also is something to consider. I'm not saying
3 that's a weight or a factor that should be added on to
4 the Sugarland factors, Your Honor, but I do think it's
5 something that adds to it.

6 I don't have anything further, unless
7 Your Honor needs me to continue talking so I can
8 persuade Your Honor that the approval of the
9 settlement, class certification and the full fee is
10 warranted here.

11 THE COURT: There you go.

12 MR. MONTEVERDE: Thank you, Your
13 Honor.

14 THE COURT: Mr. Scaggs, what do I do
15 about this banker disclosure problem? You do a lot of
16 this. Do you have any thoughts for me? Instead of
17 trying to intervene in the market and keep fees
18 reasonable, why shouldn't I start letting fees climb
19 for that banker disclosure so that eventually people
20 put the information in?

21 MR. SCAGGS: It's a real problem, Your
22 Honor. And we -- thank you for the chance to give you
23 input. As someone who is working within the system,
24 as opposed to someone running the system like yours,

1 it is a real quandary because --

2 THE COURT: The Supreme Court is
3 frequently ready to remind me that I'm not running the
4 system. I hear you.

5 MR. SCAGGS: More so than me, Your
6 Honor. I think the best thing that can be done,
7 because if you're looking at the kind of certainty
8 that Delaware law has provided to corporations and
9 given us the lead, and the things that we value
10 because we want to be able to give that, you could go
11 with the federal system that says -- I mean, there's
12 actually regulations. And I don't think that's all
13 that helpful. We have those that say, "If you have
14 multiples, they go in." That's one way to certainty.
15 What this Court provides is the flexibility to look at
16 those in context. So I think it will require some
17 more pain in development of case law.

18 What would be helpful to us is if this
19 Court has the opportunity -- like you did -- I was all
20 ears, if you saw. These transcripts, as Your Honor
21 knows, get circulated. But the more that we can learn
22 about what the Court expects in multiples, or
23 anything, the better those disclosures will be,
24 because we have to go back and often are not involved

1 first line on these things, or fairly late in the
2 transaction, and say you need to do this or you'll get
3 enjoined, quite frankly. All that can help with
4 regards to the incentives.

5 THE COURT: Once you get to the point
6 of the injunction phase, though, like this would have
7 been a high premium deal. It would have been a tough
8 call to put that deal at risk, even for a 20-day
9 period to get multiple enhancement, even though I
10 think that ought to be in there. So it creates this
11 problem. And it strikes me that, you know, I've
12 got -- part of me thinks that I ought to continue to
13 beat up poor folks, like Mr. Monteverde, for settling
14 easily for this stuff, because maybe next time he
15 takes it and then we get to learn it. But the
16 alternative, as I say, would be to back off and let
17 fees rise.

18 Have you and Mr. Alexander thought
19 about getting together with the other deans of the
20 Delaware bar and coming up with a model banker
21 disclosure that would, you know, talk about how you
22 put in a reasonable summary of what's in the board
23 book?

24 MR. SCAGGS: Well, I think there's

1 pieces of that. That's a great idea, Your Honor.
2 Certainly that kind of document that we could work
3 through in the corporate law section could be very
4 helpful. Yeah, I think that's a great idea. In that
5 comprehensive manner, no. There is talk and there
6 is -- there's a firm that has its memo -- the more we
7 can learn about the Court's attitudes the better,
8 because we all have our memos and what we know should
9 go in. And then there's the gray areas that become
10 contextual.

11 As far as the economic incentives, I
12 really didn't answer Your Honor's question. But let
13 me suggest one other perspective, which is this
14 information may get out. I mean, it's there. I do
15 have hesitance, as a person who works within this
16 system, that we do get in a situation where there's
17 settlements, and it's a supplement, and we have to
18 come to Your Honor on a disclosure-only settlement.
19 Everybody knows these days this Court is taking hard
20 looks at that. There's no doubt about that. It's out
21 there. I can assure Your Honor, we have able counsel
22 scouring these things and come back. Then you have
23 this tad better disclosure.

24 One could look at it from a

1 perspective and say this is about right where it
2 should be because these things are happening.
3 Unfortunately, it creates another court evolution, and
4 here we are talking about that. But whether or not
5 you need to run the fees up and down, we're here in
6 Delaware, the disclosure happened, and we have a
7 midrange fee that wouldn't be considered low enough --
8 they request low enough -- to have them not bring the
9 case, but not so high it could cause other unintended
10 repercussions within the community. Having said that,
11 I'll sit down.

12 THE COURT: No, I appreciate it.
13 Mr. Scaggs, insights from you and other folks are
14 always helpful.

15 All right. Let me go through my tasks
16 for today. This hearing is for me to consider the
17 proposed settlement in Turberg v. ArcSight 5821-VCL.
18 This settlement will also resolve claims in a related
19 action pending in California, In Re ArcSight
20 Shareholder Litigation, Case No. 110-CV-182474. The
21 litigation concerns the purchase of ArcSight by
22 Hewlett-Packard Company. The parties have stipulated
23 to a nonopt-out class for purposes of settlement,
24 defined as all record and beneficial holders of shares

1 of ArcSight common stock, at any time from
2 September 13, 2010 through and including October 22nd,
3 2010, including successors in interest, predecessors,
4 et cetera. That class is reasonable and adequately
5 cohesive. The boundaries which start from the date of
6 the announcement of the tender offer and go through
7 the date of the closing of the acquisition make good
8 sense and properly define the class.

9 In terms of the Rule 23(a)
10 requirements, numerosity is readily met. As of
11 September 1st, 2010, there were 34.45 million ArcSight
12 shares outstanding held by thousands of beneficial
13 holders.

14 In terms of commonalty, the plaintiffs
15 allege common injuries arising from the defendants'
16 actions that affected all stockholders equally.

17 In terms of typicality, the class
18 members were affected in their capacity as
19 shareholders and face the same injury from the same
20 conduct. Each one of those is satisfied.

21 In terms of adequacy of
22 representation, the plaintiff was indeed a holder of
23 ArcSight stock and retained experienced counsel.
24 These fast-fuse settlements, I think, push the limits

1 on what is adequate representation. Mr. Monteverde
2 gave me a good explanation this morning that he got
3 into this because of the top-up option. When I
4 originally was looking at this last night, and in the
5 preceding days talking about it with my clerks, this
6 looked like an arm's-length deal at a significant
7 premium where the plaintiff filed three days after the
8 announcement of the transaction, before the
9 preliminary proxy was out. Really, there wasn't a lot
10 done. There were 2,300 documents obtained, no pre-MOU
11 depositions taken. I'm not asking people to churn,
12 but there wasn't much done here and folks ultimately
13 got a package, a combo platter, to use
14 Blake Rohrbacher's phrase, of disclosures, some of
15 which are nice, none of which are earth shattering,
16 some of which are -- I'll just use the
17 word unimpressive. So I think about whether or not
18 (a)(4) was met. But Mr. Monteverde has done a good
19 job explaining to me this morning that it was a
20 different world in September 2010. It made sense to
21 get into this because of the top-up option. So I will
22 hold that (a)(4) also is met.

23 In terms of the Rule 23(b)(3)
24 requirements, certification under (b)(1) is

1 appropriate because the prosecution of separate
2 actions by individual stockholders would have risked
3 inconsistent and varying results. Certification under
4 (b)(2) is also appropriate because the relief is
5 generally applicable to the class. It would have
6 taken the form of declaratory or likely
7 injunction-type relief. Here the disclosures are
8 classwide and generally applicable to the class.

9 Finally, the requirements of
10 Rule 23(aa) and Rule 23(e) have been met. I have
11 reviewed the affidavits of Mr. Turberg and they
12 satisfy the rules. Therefore I'm certifying this
13 class as a nonopt-out class pursuant to Rules 23(b)(1)
14 and (b)(2) of the Court of Chancery.

15 In terms of notice, the notice was
16 provided in compliance with Rule 23(e). It accurately
17 described the lawsuit at page two. It actually
18 described the consideration of the settlement at page
19 three. It gave the location and time of this hearing
20 at page one and five, and it informed class members
21 where to go if they wanted further information. It
22 was adequately delivered. The affidavit of
23 Carole K. Sylvester of Gilardi & Co. LLC affirms that,
24 as of September 6th, 2011, notice was mailed to 7,776

1 potential class members and nominees.

2 In terms of the merits of the
3 settlement, this is another one where I thought hard
4 about it. In terms of the combo platter of
5 disclosures, particularly the bankers' disclosures,
6 there are things that I think are very helpful. The
7 additional information is information that, I think,
8 if you were to consider what really constitutes a fair
9 summary, then the background multiples should be in
10 there, just like they're in there when you give them
11 to the board.

12 As I suggested in my conversation with
13 Mr. Monteverde, you would never see a board book that
14 would go to the board without the background
15 multiples. You would never expect the board to simply
16 hear from the banker, "Oh, well, we selected the
17 range." And one would not want to defend the due care
18 injunction case where that was the situation. So I
19 think that that information was certainly helpful and
20 important and supports the settlement. Some of the
21 other things on the combo platter I am less enthused
22 by.

23 Although the settlement here was
24 relatively small consideration, it was small

1 consideration for quite weak claims. The principal
2 claim here was a Revlon claim challenging the price
3 and defensive measures. But the price was really a
4 substantial premium. And although I am not one who
5 thinks that premium standing alone is evidence of good
6 conduct (one could just as easily get a premium in a
7 hot market where one, had one acted as a responsible
8 fiduciary, could get a bigger premium), this is a
9 situation where, when you read the background of the
10 merger, Morgan Stanley and the board here appear to
11 have done a fine job. It's hard to quibble with what
12 happened. They didn't go exclusive. They contacted
13 six other companies. They negotiated hard on price.
14 They didn't take the initial deal. This was a process
15 that really looked good. So that's another reason why
16 it was strange to me that this was a case that
17 inspired allegations about fiduciary breach, because
18 not only was it a good premium but it was a case
19 where, when you read the background of the merger, at
20 least my impression was that these were properly
21 motivated, well-advised fiduciaries who were doing a
22 great job. Part of me wondered why this wasn't a
23 situation where the plaintiffs might have just said,
24 "Hey, you know what? We filed this but there's not

1 much here. We're going to go away." Ultimately, the
2 claims were quite weak and the disclosures do provide
3 sufficient consideration for a settlement.

4 Now, in terms of attorneys' fees,
5 Delaware's goal in awarding attorneys' fees is to
6 provide real rewards for plaintiffs who file real
7 claims and do real work. Our goal is not to confer
8 socially unwholesome windfalls on people who simply
9 file upon the announcement of a transaction and then
10 don't do very much. What I have said and what I stand
11 by is that I am going to give some deference to the
12 negotiations of counsel when I think the disclosures
13 fall within the type of range that is not irrational,
14 even if the Court would likely have come to a
15 different view had I considered the matter myself.

16 Here there were disclosures that
17 provide helpful information about the banker's
18 background. There were some other helpful
19 disclosures. Had this been a really litigated and
20 contested fee petition, I would have gone through
21 those and given you greater detail about my thoughts
22 and what they were worth. But because counsel has
23 negotiated the not-outlandish fee of \$500,000 for
24 these, I will go ahead and approve the settlement as

1 submitted.

2 MR. MONTEVERDE: Would Your Honor like
3 a copy of --

4 THE COURT: Miss Keener was kind
5 enough to send me a copy.

6 MR. MONTEVERDE: Yes, Your Honor.
7 Thank you.

8 THE COURT: So I have it. I'm writing
9 this down.

10 MR. MONTEVERDE: I think it's page
11 eight.

12 THE COURT: I got it.

13 MR. MONTEVERDE: Thank you, Your
14 Honor. Sorry.

15 THE COURT: And I should note that I
16 do not plan to rely on this fee award as an indication
17 of the value of any aspect of this settlement, to the
18 extent there's a future contested proceeding. I was
19 heavily influenced by the fact that experienced
20 counsel negotiated the amount. As I say, it was not
21 an outlandish number to come to for a disclosure
22 settlement. I have said myself that you start from a
23 \$4-500,000 range.

24 I'm also influenced by the fact that,

1 although I think that the payment conceivably could be
2 rich, one could view this as a helpful incentive in
3 terms of trying to get people to put banker disclosure
4 that is more of a fair summary in the initial document
5 as opposed to leaving it out.

6 So I'm handing this to the clerk. I
7 appreciate everyone coming in today. Mr. Monteverde,
8 it's always good to see you. I appreciate your
9 thorough presentation. Mr. Scaggs, it was good to
10 have your comments. It's good to see everyone else.
11 Thank you all for your time, and we stand in recess.

12 (Court adjourned at 10:54 a.m.)
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CERTIFICATE

I, DIANE G. MCGRELLIS, Official Court Reporter of the Chancery Court, State of Delaware, do hereby certify that the foregoing pages numbered 3 through 47 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 28th day of September, 2011.

/s/ Diane G. McGrellis

Official Court Reporter
of the Chancery Court
State of Delaware

Certification Number: 108-PS
Expiration: Permanent